

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL R. MYERS,

Plaintiff,

v.

KIRSTJEN NIELSEN, in her official
capacity as SECRETARY OF
DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Case No. C18-967-RAJ

ORDER

This matter comes before the Court *sua sponte*. For the reasons that follow, the Court **DISMISSES** *pro se* Plaintiff Michael R. Myers' complaint with leave to amend. Dkt. # 9. The Court **DENIES** Plaintiff's Motion for Removal of Surveillance Equipment (Dkt. # 5), Motion Requiring the Removal of Surveillance Equipment (Dkt. # 6) and Motion for Release of Funds (Dkt. # 7), as moot.

On June 25, 2018, Plaintiff filed this action against Defendant Kirstjen Nielsen, in her official capacity as Secretary of Department of Homeland Security. Dkt. ## 1, 9. Several days later, Plaintiff filed a Motion for Temporary Restraining Order. Dkt. # 4. On July 6, 2018, the Court denied Plaintiff's Motion for Temporary Restraining Order because Plaintiff did not establish a likelihood of success on the merits, irreparable harm in the absence of a TRO, that the balance of equities tips in his favor, or that an injunction

1 is in the public interest. Dkt. # 8. Plaintiff also submitted an application to proceed *in*
2 *forma pauperis*. Dkt. # 1. The Honorable Brian A. Tsuchida granted the application.
3 Dkt. # 3.

4 The Court's authority to grant *in forma pauperis* status derives from 28 U.S.C.
5 § 1915. The Court is required to dismiss an *in forma pauperis* plaintiff's case if the Court
6 determines that "the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on
7 which relief may be granted; or (iii) seeks monetary relief against a defendant who is
8 immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *see also See Lopez v. Smith*, 203
9 F.3d 1122, 1129 (9th Cir. 2000) ("[S]ection 1915(e) applies to all *in forma pauperis*
10 complaints, not just those filed by prisoners."). A complaint is frivolous if it lacks a basis
11 in law or fact. *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). A complaint fails
12 to state a claim if it does not "state a claim to relief that is plausible on its face." *Bell Atl.*
13 *Corp. v. Twombly*, 550 U.S. 544, 568 (2007).

14 "The legal standard for dismissing a complaint for failure to state a claim under 28
15 U.S.C. § 1915(e)(2)(B)(ii) parallels that used when ruling on dismissal under Federal
16 Rule of Civil Procedure 12(b)(6)." *Day v. Florida*, No. 14-378-RSM, 2014 WL
17 1412302, at *4 (W.D. Wash. Apr. 10, 2014) (citing *Lopez*, 203 F.3d at 1129). Rule
18 12(b)(6) permits a court to dismiss a complaint for failure to state a claim. The rule
19 requires the court to assume the truth of the complaint's factual allegations and credit all
20 reasonable inferences arising from those allegations. *Sanders v. Brown*, 504 F.3d 903,
21 910 (9th Cir. 2007). The plaintiff must point to factual allegations that "state a claim to
22 relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007).
23 Where a plaintiff proceeds *pro se*, the court must construe the plaintiff's complaint
24 liberally. *Johnson v. Lucent Techs. Inc.*, 653 F.3d 1000, 1011 (9th Cir. 2011) (citing
25 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)).

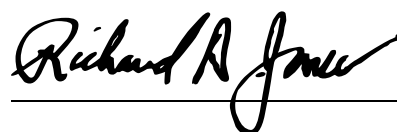
26 Plaintiff alleges that in the Spring of 2006, Defendant began "subjecting the
27 plaintiff to a bean and field of electro magnetic radiation (weapon)" and that this began
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1 biological experimentation on the plaintiff as well as training for the Department of
2 Homeland Security's "electronic security group." Dkt. # 9 at 6. Plaintiff also details
3 further assaults he has been a victim of including, sleep deprivation, electrocution,
4 perfume bombers, ladders, stairs, vehicles, and people in the park. *Id.* at 7. Plaintiff
5 states that due to Defendant's actions he has no free will and expresses a belief that there
6 is surveillance equipment installed in his vehicle. *Id.* Plaintiff contends that the Federal
7 Government "blocked timely access to financial accounts, denied employment, corrupted
8 existing contracts, corrupted court processes, assaulted and tortured the plaintiff." Dkt.
9 ## 1, 9. Plaintiff further contends that he was "financially injured by these actions to the
10 approximate amount of \$3,156,880.00." *Id.*

11 Plaintiff's allegations are conclusory and his Motion provides no basis on which
12 relief could be granted by this Court. Even construing all allegations in the light most
13 favorable to the Plaintiff and giving due deference to Plaintiff's *pro se* status, his
14 complaint fails to state a claim showing he is entitled to relief.

15 For the reasons stated above, the Court **DISMISSES** Plaintiff's Complaint (Dkt.
16 #9) and **DENIES** Plaintiff's Motion for Removal of Surveillance Equipment (Dkt. # 5),
17 Motion Requiring the Removal of Surveillance Equipment (Dkt. # 6) and Motion for
18 Release of Funds (Dkt. # 7), as moot. The Court has received notice of the death of
19 Plaintiff Michael R. Myers. The Court **STAYS** this action until November 30, 2018, or
20 until such earlier time as Mr. Myers' executor informs the Court of his estate's interest in
21 pursuing this action. If no response is filed by November 30, 2018, the Court will
22 dismiss this action without prejudice for failure to prosecute.

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24 DATED this 31st day of August, 2018.

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27 The Honorable Richard A. Jones
28 United States District Judge